WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-645

COURTS:
Juvenile Proceedings-
Restriction upon
News Publications

Honorable Dale A. Allison, Jr.
State's Attorney
Wabash County
One Twenty East Fourth Street
Mt. Carmel, Illinois 62863

Dear Mr. Allison:

I have your letter requesting my opinion, wherein you state as follows:

"At the request of our Circuit Judge after a meeting with the news media, I am asking for your opinion as to whether or not the Court or State's Attorney can prohibit or restrict naming minors in juvenile proceedings by the news media.

It seems somewhat inconsistent that a juvenile file will be impounded yet at the same time information from that file can be disseminated to the news media for publication and distribution to the public.

> We realize the news media has the right to be present at the hearing. No intention to restrict the news media is meant by this office or by the Circuit Judge. But we would appreciate clarification and an opinion from you as to whether or not this information can be made public."

The first amendment to the United States Constitution provides in pertinent part:

> "Congress shall make no law * * * abridging the freedom of speech or the press * * *."

The right of freedom of speech and freedom of the press protected by the first amendment from abridgement by Congress are among the fundamental rights and liberties protected by the due process clause of the fourteenth amendment of the United States Constitution from impairment by the States. Bridges v. California, 314 U.S. 252, 86 L.Ed. 192, 62 S.Ct. 190; Talley v. California, 362 U.S. 60, 4 L.Ed. 2d 559, 80 S.Ct. 536.

In regard to freedom of the press and speech, section 4 of article I of the Illinois Constitution of 1970 provides in pertinent part:

> "All persons may speak, write and publish freely, being responsible for the abuse of that liberty."

In determining the extent of the above constitutional guarantees, it has been generally stated that their chief purpose was to prevent previous restraints upon publication. (Near v. Minnesota, 283 U.S. 697, 75 L.Ed. 1357, 51 S.Ct. 625; Patterson v. Colorado, 205 U.S. 454, 51 L.Ed. 879, 27 S.Ct. 559. As a general rule, neither the General Assembly nor the courts may infringe on the constitutional right to freedom of speech and of the press, nor can these bodies put previous restraints upon publications. Montgomery Ward & Co. v. United Employees, 400 Ill. 38.

However, the right or privilege of free speech and of the press are not absolute rights, they do have certain limitations. In order to justify any restriction upon these rights, a substantive evil must result from the publication. Bridges v. California, supra.

In applying the aforementioned principles to the Juvenile Court Act (Ill. Rev. Stat., 1971, ch. 37, par. 701-1,

et seq.), particular note should be given to section 2-10 of the Juvenile Court Act (Ill. Rev. Stat., 1971, ch. 37, par. 702-10), which provides:

> "The official court file and other files containing any memorandum or report and any transcript of testimony in proceedings under this Act shall be impounded and shall not be made available to the general public but may be inspected by representatives of agencies, associations and news media or other properly interested persons by general or special order of court. The State's Attorney and the attorney for the minor shall at all times have the right to examine court files and records except as provided in Section 5-1."

However, permission is granted to the news media to attend juvenile court proceedings. Said permission is granted in section 1-20(6) of the Juvenile Court Act (Ill. Rev. Stat., 1971, ch. 37, par. 701-20(6)) in the following manner:

> "The general public except the news media shall be excluded from any hearing and, except for the persons specified in this Section, only persons, including representatives of agencies and associations, who in the opinion of the court have a direct interest in the case or in the work of the court shall be admitted to the hearing."

In commenting upon the legislative intent in regard to section 1-20(6) of the Juvenile Court Act, supra, our Supreme Court in In re Jones, 46 Ill. 2d 506, stated:

> "* * * [I]t is clear that the legislature intended that openess should prevail throughout the proceedings. We are of the opinion that sec. 1-20(6) serves the dual function of not only protecting a respondent's right to a 'public trial' but also preserves the right of the general populace to know what is transpiring in its courts."

In the Jones case the judge permitted newsmen to be present in the courtroom, subject, however, to the condition that nothing be published regarding what transpired in the proceedings until further order of the court.

Thus, as in criminal prosecutions, the news media is permitted entrance to juvenile hearings, obviously for the purpose of informing the public as to what is transpiring. In regard to this, the Supreme Court in Jones, supra, stated at page 509:

> "The right of the people to know what is transpiring in the courts so they may properly evaluate the work of their servants - Judge,

> Prosecutor, Sheriff and Clerk - is equally as important as guaranteeing to the defendant a fair and impartial trial."

Although juvenile proceedings are not open to the general public, the legislature has seen fit to remove this impediment as to the news media and in essence, has made the proceedings public insofar as the news media is concerned.

In Craig v. Harney, 331 U.S. 367, 91 L.Ed. 1546, 67 S.Ct. 1249, it was stated:

> "A trial is a public event * * *. Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government to suppress, edit or censor events which transpire in proceedings before it."

Thus, "any prior restraint on the press must be confined to those activities which offer immediate threat to the judicial proceedings * * *." Dorfman v. Meizner, 430 F. 2d 558, 563 (7 Cir., 1970).

It is implicit from the legislative authorization to news media to attend juvenile proceedings that the reporters in attendance would report what they saw and heard. Any attempt by the juvenile court to restrict publication would amount to a prior restraint on publication, which can only be exercised where a substantive evil would result. The disclosure of the name of the minor involved in the juvenile proceeding could be viewed as a possible evil when considered with the purposes of the Juvenile Court Act. However, when balanced against the right of the public to know what is transpiring in its courts the effect is to eliminate this possible evil. It is to be assumed that the press media would exercise the constitutional rights of freedom of speech and of the press with responsible restraint thereby upholding the purposes of the statute for the protection of juveniles to the fullest possible extent. I understand that it is the practice of most elements of the media in Illinois to withhold the names of juveniles in news accounts of court proceedings except in the most aggravated cases.

Therefore, it is my opinion that a juvenile court may not restrict the news media from publishing that information

which is obtained from their attendance at juvenile proceedings, unless, in a particular case, such publication would offer an immediate threat to the judicial proceedings.

You have also asked whether the State's Attorney has any such power to impose restrictions of this nature. I know of no basis for any such authority in the State's Attorney. The answer to that question is in the negative.

Very truly yours,

A T T O R N E Y G E N E R A L